

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.23706 of 2012

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Afroz Alam, Son of Md. Yakub, resident of Village- New Millat Colony,
Sector 3, Phulwarisharif, P.S.- Phulwarisharif, Town and District- Patna.

.... Petitioner

Versus

1. The State of Bihar through the Principal Secretary, Human Resources Department, Government of Bihar, New Secretariat, Patna.
2. Director (Primary Education), Human Resources Department, Government of Bihar, New Secretariat, Patna.
3. District Superintendent of Education, Patna.

.... Respondents

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Appearance :

For the Petitioner : Mr. Shivendra Kishore, Sr. Advocate, M/S.
Jai Kishor Poddar and Saroj Kumar,
Advocates.

For the State : Mr. Sanjay Kumar, A.C. to A.A.G. 4.

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CORAM: HONOURABLE MR. JUSTICE SUDHIR SINGH
C.A.V. ORDER

3 30-06-2017 The present writ application has been filed seeking direction upon the respondent as to fix the seniority of the petitioner in the seniority list of 2nd Primary Teacher's (Main) Examination 1996, held through Bihar Public Service Commission and further to give pay protection with consequential benefits.

2. The petitioner made application for the post of Assistant Teacher in terms of Advertisement No. 47/1996 under E.B.C. Category, submitting his 'Caste Certificate' issued by the concerned Circle Officer with an undertaking as to submit the 'Caste Certificate' subsequently, issued by the District Magistrate, Patna, as the same being not issued by that time on account of



strike of the State Government Employees.

3. The petitioner submitted representation along with the 'Caste Certificate' to the Bihar Public Service Commission through special post delivery (Letter No. 102 dated 24.02.1999), thereafter Admit Card was issued and the petitioner was allowed to appear in the Preliminary Examination and being successful, he appeared in the Main Written Examination. The final result was published on 1st July, 1999. The result of the petitioner was held up due to non production of the 'Caste Certificate' issued by the District Magistrate, Patna. The petitioner made representation (Annexure-2) on 11.08.1999 before the O.S.D., Bihar Public Service Commission stating about earlier submission of 'Caste Certificate' issued by the District Magistrate on 24.02.1999, thereupon vide Letter No. 53 dated 30.06.2001 (Annexure-3) the name of the petitioner was recommended under most backward category for appointment to the post of Assistant Teacher. The petitioner came to be appointed on the post of Assistant Teacher in the pay scale of Matric untrained teacher of Rs. 3050-4590 vide Memo No. 527 dated 29.01.2003 (Anexure-4). The grievance of the petitioner is that he is getting lower salary then other similarly situated persons who were appointed in the year 1999, as also for pay protection. The petitioner filed representation before the



District Superintendent of Education, Patna, on 09.01.2012 for redressal of his grievances but the same was not considered by the respondents authorities.

4. The petitioner has placed reliance upon a judgment of this Court rendered in C.W.J.C No. 8342 of 1999 (Bidwanti Kumari Vs. The State of Bihar & Ors.). The petitioner has also placed his reliance over the judgment rendered in the case of (Ganpati Singh Vs. State of Bihar), reported in 2011 (4) PLJR 766, which reads thus :

“5. It has been stated in paragraph-27 of the writ application that the petitioner has repeatedly been representing for protection of his seniority also. Once the Court holds that the appointment was delayed at the behest of respondents wrongly and not for any reason attributable to the petitioner, he is deemed to be appointed on the date that the last person junior to him came to be so appointed in pursuance of the recommendation dated 20.09.2002. The Contributory Pension Fund Scheme having come into force on 01.09.2005 has no application to him and his services will be reckoned as pensionable under the old provision.



6. In the case of Balwant Singh (Supra) it has been held at Paragraph-9 as follows :-

“9.....Considering a similar situation, this Court, in Surendra Narain Singh Vs. State of Bihar held that candidates who were selected against earlier vacancies but who could not be appointed along with others of the same batch due to certain technical difficulties, when appointed subsequently, will have to be placed above those who were appointed against subsequent vacancies.”

5. I find that there is specific contention of the petitioner that he submitted his ‘Caste Certificate’ issued by the District Magistrate to the Bihar Public Service Commission on 24.02.1999, thereafter the final result came to be published on 01.07.1999. The result of the petitioner was not published then he made a representation to the O.S.D., Bihar Public Service Commission on 11.08.1999 prior to the recommendation made by the Bihar Public Service Commission on 28.08.1999, regarding the candidates of Extremely Backward Class but the petitioner came to be appointed on 29.01.2003 vide Annexure-4, and such delay in appointment of the petitioner is not attributable to him.



The respondents have not made rebuttal of the contention of the petitioner, indicated above.

6. In the facts and circumstances mentioned above and in view of the decision of Ganpati Singh Case (Supra), I hereby direct that the petitioner would be entitled to seniority over the persons, who were below him in the merit list and he would also be entitled to pay protection.

Accordingly, this writ petition is allowed.

(Sudhir Singh, J)

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